

Respondent maintains the Award should be affirmed in all respects. Respondent concedes claimant sustained a temporary aggravation to his right knee on January 24, 2001, but agrees with the ALJ's finding that claimant failed to meet its burden of proof as to additional permanency for the right knee or the existence of an altered gait.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the evidentiary record filed herein, the stipulations of the parties, and having considered the parties' briefs and oral arguments, the Board makes the following findings of fact and conclusions of law:

The ALJ adequately and succinctly set forth the factual background and medical evidence in his Award, so they will not be unnecessarily repeated. Only those facts which are pertinent to the issues at hand will be discussed.

There is no dispute that claimant has a history of right knee problems dating back to 1991, including four surgeries after 1998. On January 24, 2001, claimant was working when he tripped on a piece of rebar and fell, injuring his right knee. Claimant alleges he sustained a back injury as a result of his altered gait. Following his accident, claimant was referred to Dr. Naomi Shields, an orthopaedic physician who had previously treated him for significant knee problems. Dr. Shields performed a diagnostic arthroscopy and debridement on May 7, 2001.

Drs. Pedro A. Murati and Michael Munhall also examined claimant and opined that he sustained not only additional impairment to his knee but to his back as well, due to an altered gait. As a result, Dr. Murati assigned an impairment rating of 11 percent and Dr. Munhall a 14 percent. As evidence of additional permanent impairment, claimant maintains that no physician advised him that he would require a total right knee replacement until after the January 2001 accident.

Dr. Philip Mills also examined claimant and found he could not relate claimant's alleged back problems to the January 2001 knee injury. With respect to the knee, it is unclear from his deposition testimony whether he assigned a zero percent impairment or just elected not to rate the knee.

Based upon this evidence and the facts presented at the regular hearing, the ALJ concluded claimant had failed to prove anything other than a temporary aggravation of his right knee condition. The ALJ was not persuaded that there was any additional permanency to his knee nor did claimant sufficiently prove a connection between his accident and his back complaints.

The Board has reviewed the entire record and concludes the ALJ's findings should be affirmed. First, the record is clear that claimant had a significant preexisting impairment to his right knee. Although both Drs. Murati and Munhall indicated claimant will need a total right knee replacement at some point in the future, claimant had already been told that years before. In Dr. Murati's own report he indicates claimant had already been told by a physician

who treated him before that he should have a total knee replacement but to delay that procedure as long as possible.¹ Indeed, there is no testimony that claimant's knee is significantly worse than before his accident. The Board agrees claimant has failed to prove that it is more probably true than not that he sustained additional permanent impairment to his right knee as a result of the January 2001 accident.

Second, the Board also agrees with the ALJ's finding that claimant failed to prove his alleged back complaints were attributable to his January 2001 accident. Claimant's regular hearing testimony indicates he experiences "dull, dragged out pain, stabbing"² but does not reveal when these complaints began nor how consistent they were. Dr. Murati acknowledged that prior to his evaluation, none of the treating physicians had diagnosed or documented back complaints. When Dr. Mills examined claimant he observed an unremarkable gait. Moreover, claimant was able to squat and walk on his tiptoes and heels. Based upon those observations and claimant's inability to provide a pertinent history or medical records suggesting a back injury, Dr. Mills was unable to attribute any back injury to the January 2001 accident.

AWARD

WHEREFORE, it is the finding, decision and order of the Board that the Award of Administrative Law Judge John D. Clark dated August 5, 2003, is affirmed.

IT IS SO ORDERED.

Dated this _____ day of March, 2004.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: David H. Farris, Attorney for Claimant
Lyndon W. Vix, Attorney for Respondent and its Insurance Carrier
John D. Clark, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

¹ Murati Depo., Ex. 2 at. 2.

² R.H. Trans. at 17.